IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

WP(C).No. 32700 of 2006(P)

PETITIONER:

DIPAL JURMARWALE,
MUDRA ENTERPRISES, 29/143(1), 'PANCHAMI',
TOC H ROAD, VYTTILA, ERNAKULAM.

BY ADV. SRI.R.MURALIDHARAN (AROOR)

RESPONDENTS:

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1. THE SALES TAX OFFICER,
II CIRCLE, TRIPUNITHURA, ERNAKULAM.

2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM.

3. THE INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM.

BY G.P.SRI.SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.32700 of 2006

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Dated this the 8th day of December, 2006.

JUDGMENT

Petitioner deals in different commodities including tissue paper. He treated that as a commodity falling under Entry 106 of the First Schedule of the K.G.S.T.Act, the rate of tax applicable being 8%. However, the assessing authority, overruling his objections, held that tissue paper is toilet paper falling under Entry 132, chargeable with tax at the rate of 20%. It is this controversy that is gaining attention before the D.C. (Appeals) in Exts.P5 and P6 appeals.

2. By Ext.P9, the D.C.(Appeals) has granted an order of stay subject to the condition that the writ petitioner appellant will pay one third of the balance tax and furnishes security for the balance. Petitioner challenges that order in so far as it imposes the condition for payment.

3. As already noticed, the only issue for decision in the statutory appeals is the rate of tax that is applicable. The question to be determined will be whether the commodity is toilet paper or whether it would fall within the general entry – paper. Ext.P9 order shows that the D.C.(Appeals) was satisfied that the petitioner has established a prima facie case in favour of his contentions being upheld. This means that he had established a prima facie case that the rate of tax adopted by the assessing authority is not correct. As a necessary corollary, it ought to have been held that there is a prima facie predominant case that the assessment shall fall back to entry 106. If that were so, in my considered view, ends of justice would be satisfied by granting an order of stay without imposing any conditions.

4. For the aforesaid reasons, while sustaining the order of stay granted in Ext.P9, the conditions imposed thereby are vacated.

5. The D.C.(Appeals) will make an endeavour to

consider the appeal finally and dispose it off within a period of two months from the date of receipt of a copy of this judgment. Petitioner is directed to place the copy of the judgment before the D.C.(Appeals).

Writ Petition is disposed of in the above terms.

Thottathil B.Radhakrishnan,
Judge.

sl.